

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK

ONTEL PRODUCTS CORPORATION,

*Plaintiff*

v.

AMAZON.COM, Inc.,

*Defendants.*

Civil Action No.: 1:12-CIV-04610

**ANSWER TO COMPLAINT**

Defendant Amazon.com, Inc. (Defendant) by its counsel, submits its Answer in response to the Complaint, as follows:

1. Defendant notes that the complaint speaks for itself and no response is required. Defendant denies that plaintiff is entitled to judgment in its favor for any cause of action or for any relief whatsoever. Defendant denies any allegations in the Complaint to which it did not specifically respond. Defendant reserves the right to assert any additional and future defenses as may be revealed by discovery or otherwise.

2. Defendant admits the allegations contained in paragraph 2.

3. Defendant admits the allegations contained in the first sentence of paragraph 3. It further admits to advertising and doing business within this state. Defendant otherwise denies the allegations contained in paragraph 3.

4. Defendant admits the allegations contained in paragraph 4.

5. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 5 of the Complaint, and therefore denies the same.

6. Defendant admits the allegations contained in paragraph 6.

7. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 7 of the Complaint, and therefore denies same.

8. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 8 of the Complaint, and therefore denies same.

9. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 9 of the Complaint, and therefore denies same.

10. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 10 of the Complaint, and therefore denies same.

11. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 11 of the Complaint, and therefore denies same.

12. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 12 of the Complaint, and therefore denies same.

13. The alleged trademark registration speaks for itself and no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 13.

14. Defendant denies the allegations contained in paragraph 14.

15. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 15 of the Complaint, and therefore denies same.

16. Defendant admits the allegations contained in paragraph 16.

17. Defendant admits the allegation admits that it processes payment for sales made by third-party retailers and further admits that it receives payment for those sales and remits the balance to third-party retailers. Defendant denies the remaining allegations in paragraph 17.

18. Defendant denies the allegations contained in paragraph 18.

19. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 19 of the Complaint, and therefore denies same.

20. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 20 of the Complaint, and therefore denies same.

21. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 21 of the Complaint, and therefore denies same.

22. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 22 of the Complaint, and therefore denies same.

23. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 23 of the Complaint, and therefore denies same.

24. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 24 of the Complaint, and therefore denies same.

25. Defendant admits that counsel for Plaintiff sent Defendant correspondence regarding “DREAM LITES” and admits that the correspondence speaks for itself. Defendant denies the remaining allegations contained in paragraph 25.

26. Defendant admits that counsel for Plaintiff sent Defendant correspondence regarding “DREAM LITES” and admits that the correspondence speaks for itself. Defendant denies the remaining allegations contained in paragraph 26.

27. Defendant admits that in response to correspondence from Plaintiff’s counsel Defendant agreed to discontinue the use of the term “DREAM LITES” in sponsored links on third-party websites. Defendant denies the remaining allegations contained in paragraph 27.

28. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 28 of the Complaint, and therefore denies same.

29. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 29 of the Complaint, and therefore denies same.

30. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 30 of the Complaint, and therefore denies same.

31. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 31 of the Complaint, and therefore denies same.

32. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 32 of the Complaint, and therefore denies same.

33. Defendant denies the allegations contained in paragraph 33.

34. Defendant denies the allegations contained in paragraph 34.

35. Defendant denies the allegations contained in paragraph 35.

36. Defendant repeats and re-alleges the responses set forth above.

37. As to the claims in paragraph 37, the alleged trademark registration speaks for itself and no response is required. To the extent a response is required Defendant lacks knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 37 of the Complaint, and therefore denies same.

38. Defendant denies the allegations contained in paragraph 38.

39. Defendant denies the allegations contained in paragraph 39.

40. Defendant denies the allegations contained in paragraph 40.

41. Defendant denies the allegations contained in paragraph 41.

42. Defendant denies the allegations contained in paragraph 42.

43. Defendant repeats and re-alleges the responses set forth above.

44. Defendant denies the allegations contained in paragraph 44.

45. Defendant denies the allegations contained in paragraph 45.

46. Defendant repeats and re-alleges the responses set forth above.

47. As to the claims in paragraph 47, the alleged trademark registration speaks for itself and no response is required. To the extent a response is required, Defendant lacks knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 47 of the Complaint, and therefore denies same.

48. Defendant denies the allegations contained in paragraph 48.

49. Defendant denies the allegations contained in paragraph 49.

50. Defendant denies the allegations contained in paragraph 50.

51. Defendant denies the allegations contained in paragraph 51.

52. Defendant denies the allegations contained in paragraph 52.

### **AFFIRMATIVE DEFENSES**

For its Affirmative Defenses, Amazon.com, Inc. alleges as follows:

#### **First Affirmative Defense**

Plaintiff is not entitled to relief because Defendant's actions constitute nominative fair use of the alleged trademarks.

#### **Second Affirmative Defense**

Plaintiff is not entitled to relief because Defendant's actions constitute descriptive fair use of the alleged trademarks.

#### **Third Affirmative Defense**

Plaintiff fails to state a claim upon which relief can be granted.

Fourth Affirmative Defense

Plaintiff is not entitled to relief because Defendant is licensed to use Plaintiff's alleged trademarks.

Fifth Affirmative Defense

Plaintiff is not entitled to relief because Defendant is entitled to use plaintiff's alleged marks under the doctrine of first sale.

Sixth Affirmative Defense

Plaintiff is not entitled to relief under the doctrine of waiver.

Seventh Affirmative Defense

Plaintiff is not entitled to relief under the doctrine of estoppel.

Respectfully submitted,

LEASON ELLIS LLP



Dated: July 30, 2012  
White Plains, New York

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*Attorneys for Amazon.com, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on July 30, 2012, I electronically filed the foregoing document with the clerk of court for the U.S. District Court for the Southern District of New York, using the electronic case filing system of that court. The electronic case filing system will send a "Notice of Electronic Filing" to all attorneys of record who have consented in writing to accept this notice as service of this document by electronic means.

A handwritten signature in blue ink that reads "Martin Schwimmer". The signature is cursive and fluid.

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